

# Conflict of Interest Toolkit

## Managing COI when Procuring Goods & Services

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The Conflict of Interest (COI) Toolkit comprises Fact Sheets, Checklists, Case Studies and Quick Tips Sheets which are designed to provide practical assistance to Department employees in addressing day to day conflict of interest scenarios.

If you would like to print the [COI Toolkit](#) in full (which includes information on conflict of interest in recruitment, other (external) employment and procuring goods and services) you can download the single document on the [Conflict of Interest page on HRWeb](#).

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COIs are an inevitable fact of organisational life and require a systematic risk management approach to ensure that the public interest is always protected. The steps required to mitigate perceived, potential and actual COI risk will vary in different circumstances. The COI Toolkit is intended to assist in the application of the Department’s COI Policy to typical risk situations. It is the employee’s responsibility to ensure that the steps they take in any given circumstance are reasonably sufficient to avoid risks to the public interest. A failure to do so may lead to disciplinary action.

*New documents will be added to the COI Toolkit as needs are identified. Please send any suggestions and feedback to the Employee Conduct Branch.*

**For further information and advice, contact the Employee Conduct Branch on 9637 2595 or [employee.conduct@edumail.vic.gov.au](mailto:employee.conduct@edumail.vic.gov.au)**

## Quick Tips: Contractor Engaged for Private Works

A real or apparent conflict of interest may exist when a contractor used by the school or Department is engaged for private work.

### Consider the risks

- The contractor may be tempted to do private work at a discounted rate to ensure they remain in good favour for future public contracts. This way, the public official would improperly receive a private benefit (see also [Gifts, Benefits and Hospitality](#) policy).
- Even without the provision of any discount, if the contractor does regular private work for the public official, their mutually beneficial relationship might be seen to influence the public official in providing future public contracts.

### Take action

Ensure that the contractor's work performed in a private capacity is charged at the standard and published rates. (Remember, though, that this is not likely to address a perception in the community that the contractor provided a discount).

Ensure that the private work done is declared appropriately prior to any future public contract being awarded.

**Remember:** the greater the benefit—either to the public official or to the private contractor—the greater the risk to the Department and the more serious the steps warranted to avoid any perception of COI. Where there are reasonable alternatives, or where the COI risks are particularly high, you should avoid using a contractor for private works who is involved in any work for the Department.

## Case Study: Procurement (Tendering)

Hiroshi is a senior technical specialist in the Department. His business area has identified a need to contract an organisation to develop a special product for the Department. It is anticipated to cost \$250,000 and it will therefore be subject to a public tender. Hiroshi is nominated to chair a panel of three to develop the Request for Tender and then evaluate the tenders received.

Hiroshi's brother-in-law runs a small company which does work in this area but Hiroshi doesn't mention the opportunity to him. He does not disclose to his panel colleagues the fact that his brother-in-law might tender.

When his brother-in-law's company submits an application, Hiroshi tells his colleagues on the panel about the COI and reports it to his Executive Director. When he meets with his Executive Director to discuss the situation they both agree that there is no-one else with expertise in this area who can take Hiroshi's place on the tender evaluation panel. The Executive Director decides to oversight the panel's evaluation process herself.

The panel awards the contract to Hiroshi's brother-in-law's company. One of the unsuccessful tenderers writes to the Minister saying the process was corrupt.

### Are there any COI issues which have not been addressed?

After his brother-in-law's company applied for the contract, Hiroshi acted appropriately by **reporting** the **actual** COI to the Executive Director and then **recruiting** her to oversight the tender evaluation. (With particularly high-risk projects, it is sometimes appropriate to recruit external probity advisers to fulfil this function).

However, Hiroshi did not report the **potential** COI when the tender proposal was being developed. This means that a reasonable person might later argue that Hiroshi was able to influence the design of the tender brief to benefit his brother-in-law. The later involvement of the Executive Director in oversighting the evaluation process could not remedy this **perception** of COI.

### Possible outcomes

In the circumstances, it is not clear whether Hiroshi's failure to report the potential COI taints the process to the extent that it needs to be retendered. However, it has resulted in uncertainty and delay which could easily have been avoided if Hiroshi had disclosed knowledge of his brother-in-law's potential interest at an earlier point.

### Tips to remember:

Carefully consider whether potential or perceived conflicts of interest might apply to your work. Reporting the matter early may avoid future uncertainty and expense.

## Case Study: Procurement (Purchasing in Schools)

Rob is responsible for ICT management in a secondary school. The students' and teachers' iPads are due for an upgrade and, after seeking quotes from a number of suppliers, Rob settles on X-Mart because of their competitive prices. X-Mart also offers him a \$30 iTunes voucher for every 10 iPads purchased. Rob thinks he might use the vouchers as awards to students for various purposes.

### Issues to consider

This situation is an example of an employee receiving a gift or benefit and Rob would have been expected to declare the benefit to his manager/principal in accordance with the Department's [Gifts, Benefits and Hospitality](#) policy.

Receiving gifts, benefits or hospitality creates a conflict of interest for the employee. Even though Rob intends to use the gifts for school purposes, if the gifts are not declared and properly accounted for, there is a risk that Rob might keep a card for himself, or give them to someone in a way that benefits his friends or his reputation.

Improperly receiving gifts can create reputational risk for the employee and the school. It can also create improper opportunities for commercial interests to leverage their own interests in their relationship with the school.

### Rob should have—

- Reported the offer of the iTunes cards to his principal,
- Taken other steps to address the risks associated with the dispersal of the cards, eg: undertaking to add the iTunes cards to the school inventory and record how they are distributed.

### Preventative measures: training, communication, clear expectations

Companies frequently offer sweeteners to build client relationships and there is therefore a real risk that employees who have purchasing responsibilities could rationalise improper conduct by thinking of the benefits as insignificant, merely the way business is done. With foresight, schools and business units can ensure that proper training, communication of expectations and accountability checks provide relevant staff with confidence to deal with such offers appropriately when they do come up.

# Case Study: Procurement (Contractors and Consultants)

A School Council engages a friend of the principal to do regular landscaping and maintenance work around the grounds. Aside from being a friend, the contractor also does regular work on the principal's private property.

## Assess the COI risks

- The mutually beneficial nature of the relationship between the principal and the contractor may lead to overcharging, or an overuse of the contractor's services, or a reluctance to address issues with the quality of the contractor's work.
- There may be reputational risk to the school. A useful test is to consider how it would seem if the principal's relationship with the contractor and nature of the contract become known to the community or broader public.

## Take mitigating steps

- The principal should declare his or her private interest (the nature of the friendship) as early as possible to the School Council and it should be recorded in the Council's minutes. It is not necessary in this case for the principal to declare his or her interest to the Regional Director, since the School Council is the decision-making body and the Councillors are not subordinates of the principal.
- The principal should not participate in Council deliberations over the contract.
- The Council should consider whether further steps are necessary to mitigate risks such as seeking several quotes to ensure value for money even where this is not a requirement under the relevant purchasing policy. To ensure objectivity, the principal's friend should not be informed of the value of other quotes.
- The decision of the Council, including information about the principal's interests and relevant considerations taken into account, should be recorded for transparency and accountability.
- Ensure periodic review of the contract(s).